IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1820 OF 2019

Hindustan Composites Limited .. Petitioner.
v/s.
Assistant Commissioner, Central
GST and Central Excise, Division-IX,
Mumbai East & Anr. .. Respondents.

....

Mr. Jitendra Jain, Counsel, a/w. Ms. Kathleen Lobo and Ms. Saasha Malpani, i/b. Khaitan & Co., for the Petitioner.

Mr. Bhanu Jain, Assistant Commissioner, CGST, present.

Mr. Sham Walve, a/w. Mr. Ram Ochani, for the Respondents.

....

CORAM: M.S.SANKLECHA, &
S.C. GUPTE, JJ.

DATE : 1 AUGUST, 2019.

P.C:-

. On 26 July 2019, we passed the following order :

> ". This petition, under Article 226, challenges the order dated 30 April 2019, passed by the Assistant Commissioner, Central GST and Central Excise under the Central Excise Act, 1944 ("the Act").
>
> 2. The impugned order rejects the Petitioner's claim for refund of Rs.36,36,915/- on grounds of unjust enrichment. This, according to the Petitioner, is contrary to, and in defiance of, binding decisions of the Tribunal,

> particularly, the order dated 27 October 2017, passed by Customs, Excise And Service Tax Appellate Tribunal ("Tribunal"). The above order directed the adjudicating authority, namely, Respondent No.1, to await the outcome of the Revenue's appeal against the order dated 21 January 2014 of the Tribunal before the High Court, being Central Excise Appeal No.260 of 2014. The impugned order, after recording that the Respondent-Revenue's Appeal No.260/2014 was withdrawn by the Revenue on 22 August 2018, yet proceeds to reject the refund claimed in defiance of the order of the Tribunal dated 21 January 2014.
>
> 3. Mr. Ochani, learned Counsel appearing for the Revenue, seeks time to take instructions. At his request, the petition is adjourned to 1 August 2019.
>
> 4. Parties are put to notice that the petition is likely to be disposed of finally on the next date.
>
> 5. Stand over to 1 August 2019."

2. Today, Mr. Walve and Mr. Ochani, appearing for the Respondents, very fairly state on instructions of Mr. Bhanu Jain, Assistant Commissioner, Central GST and Central Excise, that the Petitioner's grievance in the present facts is justified. This as the impugned order is contrary to and in defiance of the orders of the Tribunal which have attained finality.

3. In the above view, the impugned order dated 30 April 2019, passed by the Assistant Commissioner of Central GST and Central Excise, is quashed and set aside.

4. Mr. Walve, on instructions of Mr. Bhanu Jain, Assistant Commissioner, Central GST and Central Excise, further states that the

Petitioner's refund application would be disposed of within a period of eight weeks from today in accordance with the orders of the Tribunal dated 21 January 2014 and 27 October 2017.

5. Petition disposed of in the above terms.

(S.C. GUPTE,J.) **(M.S.SANKLECHA,J.)**